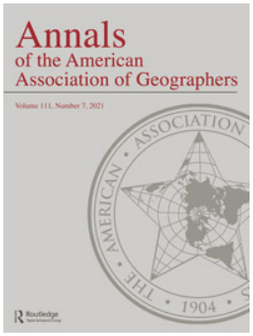

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# W(h)ither the Indian Act? How Statutory Law Is Rewriting Canada's Settler Colonial Formation

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# W(h)ither the Indian Act? How Statutory Law Is Rewriting Canada's Settler Colonial Formation

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This article documents how the Indian Act, the historic legal regime structuring settler colonialism in Canada, is being displaced by new statutory law, as nearly fifty federal statutes passed by successive governments between 2005 and 2020 rewrite First Nations land, taxation, resource, and governance regimes. I focus attention on these new laws, asking how they differ in instrument and ideology from the Indian Act. Particularly, I explore how new legislation responds to the Indian Act's (unintended) affirmation of the unique political status of Indigenous peoples and manages the long-sedimented legal and regulatory differences between reserve and Canadian jurisdictions. Transferring our attention from the Indian Act to actual sites of legislative activity, we are better positioned to perceive, critique, and challenge the evolving formation of settler colonialism in Canada today. *Key Words: Canada, Indian Act, settler colonialism, standardization, statutory law.*

The Indian Act is a document of enormous legal and political consequence.[1] Consolidating colonial-era laws into a single act in 1876 and amended almost annually for the next fifty years, the Indian Act houses the legal framework of settler colonialism in Canada. The Act was designed to define and assign Indian status, physically delimit Indigenous space, criminalize Indigenous cultural and spiritual practice, and impose Crown control of First Nations governance, finances, and infrastructure development (Kelm and Smith 2018).[2] In short, it was meant to fracture Indigenous polities into zones of legal, political, and economic exclusion en route to eventual assimilation. This article assesses the contemporary scope of the Indian Act, noting that its role in upholding colonial systems of law and power is shifting in the twenty-first century (Coates 2008; H. King and Pasternak 2018). Detailing the construction of a new, parallel, but distinct legal regime, I ask which implications a changing colonial legality has for the relationship between the state, capital, and Indigenous communities. Before exploring such questions, however, more must be understood about the Indian Act itself.

Although processes of colonization have been continuous, they are not unchanging. Nearly 150 years old, the Indian Act exemplifies law's tendency to "get 'stuck' … to fall behind and to reflect the conditions [and colonial demands] of the past rather than those of the present" (Bennett and Layard 2015, 416). Widely criticized today for impeding capital enterprise on Indigenous lands and for a legacy of coercion that is incompatible with a societal appetite for recognition and reconciliation, the Indian Act has plenty of detractors (Standing Senate Committee on Aboriginal Peoples 2007; Flanagan 2008; Atleo 2010). Yet, it has survived several attempts at repeal, maintaining a prominent public image of resilience and durability in Canada's settler-colonial legal order (Morden 2016). An unblinkered assessment of the Act will explain this incongruity.

Although deeply autocratic, the Indian Act also protects First Nations lands and, inadvertently, by its "very existence" affirms the distinct political character of Indigenous peoples (Stark 2016; see also Turner 2006). If Indigenous communities and organizations have repeatedly blocked government efforts to repeal the Indian Act, this does not signal support for the regime, but rather that proposed statutory replacements, such as the 1969 Statement of the Government of Canada on Indian Policy (the White Paper), have been perceived as comparably worse (Canada and Chrétien 1969).[3] Moreover, for all of its coercive implements, the Act leaves significant parts of Indigenous life unlegislated, generating legal and spatial interstices where Indigenous people can organize aspects of their lives free from legislative intervention. In brief, the Indian Act is riddled with contradiction: oppressive and interventionist yet

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lacking the law for lands, governance, and resource regulation that is standard in liberal capitalist societies, deeply reviled yet firmly rooted in place.

Faced with such complexity, popular attitudes regarding the Act can be summarized by the notion that "No one loves the Indian Act, but no one quite seems to know what to do with it" (Beazley 2017). The Indian Act might be universally unpopular, but I challenge the view that "what to do with it" is an inscrutable question. Rather, I suggest that perennial hand-wringing about the Indian Act unhelpfully masks a contemporary history of lawmaking that has quietly built a new legal infrastructure and altered Indigenous-state-capital matrices of power. Whereas the Indian Act persists as an obstruction to capitalist expansion and a reminder of Canada's colonial legacy, proposals to repeal it ignite controversy and conflict. Instead, I argue that strategic deferral of old statutory forms is being nimbly executed alongside the far more visible and controversial Indian Act regime. Indeed, nearly fifty First Nations–related federal statutes were passed between 2005 and 2020, marking this legislative period as the most active of the past century and signaling an untold story. I refocus attention on these new laws, asking how they differ in instrument and ideology from the Indian Act. Particularly, I explore how new legislation responds to the Indian Act's (unintended) affirmation of the unique political status of Indigenous people and how new legislation manages the regulatory gaps of the Act, referring to the laws enacted by federal or provincial governments, but that "unintentionally" do not take effect in First Nations jurisdictions (Charest 2016, 10). By shifting our attention from the Indian Act to actual sites of legislative activity, we are better positioned to identify, critique, and challenge the evolving configuration of settler colonialism in Canada today.

## Canada's Statutory Renaissance: A Comparative Methodology

Statutory law refers to the statutes, also known as acts, that are created and passed by a state's legislature. Since 2005, successive federal governments have passed statutes that alter the settler colonial legal order. The twenty-first-century increase in First Nations–related lawmaking rests on fundamental breakages with historical legislative patterns and infrastructure. Today, dozens of stand-alone statutes represent an emergent legal system rivaling the Indian Act in reach and focus. Tracing this statutory upheaval to the period between 2005 and 2020, I have examined forty-seven statutes enacted by successive federal governments pursuing the same strategy of legal restructuring (see Table 1). Beyond partisan fidelity, the Liberal government of Paul Martin (2003–2006) and Conservative government of Stephen Harper (2006–2015) passed thirty-seven federal statutes between 2005 and 2015. Under Justin Trudeau (2015–present), ten statutes have been passed and several more proposed bills were at various stages of the legislative process in the first half of 2020. I have reviewed the forty-seven statutes, their legislative summaries, official government announcements, internal government documents, and evidence from the parliamentary and senate committees tasked with the statutes' review. Using the government database LEGISinfo (n.d.), which includes all bills introduced in the House of Commons between 1994 and the present and in the Senate between 2000 and the present, a year-by-year review of all Indigenous-related bills reveals an acceleration in legislative activity beginning in 2005 and continuing to the present.

In an effort to understand the scope of this statutory resurgence, I assessed the forty-seven statutes as a coordinated legislative suite. Connecting the dots between statutes reveals a constellation wherein a novel project of lawmaking acts as a Canadian intervention in global arenas of capitalist preoccupation. Whereas legislation revising First Nations land registries, taxation structures, resource development, and governance is hailed by government as the overdue recognition of Indigenous rights (Trudeau 2018), I suggest that it represents an effort to advance the economic interests and governing powers of the settler colonial state. In this article, I detail how the construction of a resemblant but distinct legal regime is remaking the infrastructure needed to create a new relationship between the state, Indigenous communities, and capital.

Methodologically, I use comparative legal analysis, typically associated with studies on an international scale, comparing the national law of one country with that of another (Siems 2018).[4] For instance, a comparative analysis might examine law structuring jury systems in two different countries, identifying points of (dis)similarity, and investigating the contextual causes and consequences of each system.

**Table 1.** Canadian statutes and bills relating to Indigenous people, 2005–2020

| Year | Statutes (Law) | Bills (Proposed legislation) | Purview |
|---|---|---|---|
| 2005 | First Nations Commercial and Industrial Development Act, S.C. 2005, c. 53 | | Regulation (financial) |
| 2005 | First Nations Oil and Gas and Moneys Management Act, S.C. 2005, c. 48 | | Regulation (financial/resource) |
| 2005 | Labrador Inuit Land Claims Agreement Act, S.C. 2005, c. 27 | | Modern treaty |
| 2005 | First Nations Fiscal and Statistical Management Act, S.C. 2005, c. 9 | | Regulation (financial), taxation |
| 2005 | Tlicho Land Claims and Self-Government Act, S.C. 2005, c. 1 | | Modern treaty |
| 2006 | First Nations Jurisdiction over Education in British Columbia Act, S.C. 2006, c. 10. | | Self-government (education) |
| 2006 | Budget Implementation Act, 2006, S.C. 2006, c. 4 | | Taxation |
| 2007 | An Act to amend the First Nations Land Management Act, 2007, S.C. 2007, c. 17 | | Regulation (land) |
| 2008 | Kelowna Accord Implementation Act, S.C. 2008, c. 23 | | Education, health, housing |
| 2008 | Tsawwassen First Nation Final Agreement Act, S.C. 2008, c. 32 | | Modern treaty |
| 2008 | An Act to amend the Canadian Human Rights Act, S.C. 2008, c. 30 | | Rights |
| 2008 | Specific Claims Tribunal Act, S.C. 2008, c. 22 | | Land claims |
| 2008 | Nunavik Inuit Land Claims Agreement Act, S.C. 2008, c. 2 | | Modern treaty |
| 2009 | Provincial Choice Tax Framework Act, S.C. 2009, c. 32 | | Taxation |
| 2009 | Maanulth First Nations Final Agreement Act, S.C. 2009, c. 18 | | Modern treaty |
| 2009 | An Act to amend the Cree-Naskapi (of Quebec) Act, S.C. 2009, c. 12 | | Self-government |
| 2009 | An Act to amend the Indian Oil and Gas Act, S.C. 2009, c. 7 | | Regulation (resource) |
| 2010 | Gender Equity in Indian Registration Act, S.C. 2010, c. 18 | | Response to court ruling |
| 2010 | First Nations Certainty of Land Title Act, S.C. 2010, c. 6 | | Regulation (land) |
| 2010 | | Bill S-212, An Act to amend the Excise Tax Act (tax relief for Nunavik), 3rd sess., 40th Parliament, 2010 | Taxation |
| 2011 | Eeyou Marine Region Land Claims Agreement Act, S.C. 2011, c. 20 | | Modern treaty |
| 2012 | Jobs and Growth Act, 2012, S.C. 2012, c. 31 | | Regulation (land/resource), rights |
| 2012 | Jobs, Growth and Long-term Prosperity Act, S.C. 2012, c. 19 | | Regulation (environmental/fisheries) |
| 2012 | | Bill S-212, First Nations Self-Government Recognition Act, 1st sess., 41st Parliament, 2012 | Governance |
| 2013 | Economic Action Plan 2013 Act, No. 1, S.C. 2013, c. 33 | | Education |

(*Continued*)

**Table 1.** (*Continued*).

| Year | Statutes (Law) | Bills (Proposed legislation) | Purview |
|---|---|---|---|
| 2013 | Yale First Nation Final Agreement Act, S.C. 2013, c. 25 | | Self-government |
| 2013 | Safe Drinking Water for First Nations Act, S.C. 2013, c. 21 | | Regulation (resource/ service delivery) |
| 2013 | Family Homes on Reserves and Matrimonial Interests or Rights Act, S.C. 2013, c. 20 | | Rights |
| 2013 | Northern Jobs and Growth Act, S.C. 2013, c. 14 | | Regulation (land) |
| 2013 | First Nations Financial Transparency Act, S.C. 2013, c. 7 | | Regulation (financial) |
| 2014 | First Nations Elections Act, S.C. 2014, c. 5 | | Governance |
| 2014 | Northwest Territories Devolution Act, S.C. 2014, c. 2 | | Governance |
| 2014 | Qalipu Mi'kmaq First Nation Act, S.C. 2014, c. 18 | | Rights |
| 2014 | Sioux Valley Dakota Nation Governance Act, S.C. 2014, c. 1 | | Self-government |
| 2014 | Indian Act Amendment and Replacement Act, S.C. 2014, c. 38 | | Governance |
| 2014 | Tla'amin Final Agreement Act, S.C. 2014, c. 11 | | Modern treaty |
| 2014 | Tackling Contraband Tobacco Act, S.C. 2014, c. 23 | | Regulation (economic), criminalization |
| 2014 | | Bill C-33, First Nations Control of First Nations Education Act, 2nd sess., 41st Parliament, 2014 | Self-government (education) |
| 2015 | Déline Final Self-Government Agreement Act, S.C. 2015, c. 24 | | Self-government |
| 2015 | Yukon and Nunavut Regulatory Improvement Act, S.C. 2015, c. 19 | | Governance |
| 2016 | | Bill S-212, Aboriginal Languages of Canada Act, 1st sess., 42nd Parliament, 2016 | Rights |
| 2016 | | Bill C-318, Indian Residential School Reconciliation and Memorial Day Act, 1st sess., 42nd Parliament, 2016 | Rights |
| 2016 | | Bill C-332, United Nations Declaration on the Rights of Indigenous Peoples Reporting Act, 1st sess., 42nd Parliament, 2016 | Rights |
| 2016 | | Bill C-262, United Nations Declaration on the Rights of Indigenous Peoples Act, 1st sess., 42nd Parliament, 2016 | Rights |
| 2017 | An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général), S.C. 2017, c. 25 | | Response to court ruling |
| 2017 | National Seal Products Day Act, S.C. 2017, c. 5 | | Rights |
| 2017 | Anishinabek Nation Education Agreement Act, S.C. 2017, c. 32 | | Self-government (education) |

(*Continued*)

**Table 1.** (*Continued*).

| Year | Statutes (Law) | Bills (Proposed legislation) | Purview |
|---|---|---|---|
| 2017 | | Bill C-386, Orange Shirt Day: A Day for Truth and Reconciliation Act, 1st sess., 42nd Parliament, 2017 | Rights |
| 2018 | Cree Nation of Eeyou Istchee Governance Agreement Act, S.C. 2018, c. 4 | | Self-government |
| 2018 | Budget Implementation Act, 2018, No. 2, S.C. 2018, c. 27 | | Regulation (land, financial), governance |
| 2018 | | Bill C-369, An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code (National Day for Truth and Reconciliation), 1st sess., 42nd Parliament, 2019 | Rights |
| 2018 | | Bill S-215, An Act to amend the Criminal Code (sentencing for violent offences against Aboriginal women), 1st sess., 42nd Parliament, 2018 | Rights |
| 2019 | An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts, S.C. 2019, c. 28 | | Regulation (resource), rights |
| 2019 | An Act to amend the Fisheries Act and other Acts in consequence, S.C. 2019, c. 14 | | Regulation (resource), rights |
| 2019 | Indigenous Languages Act, S.C. 2019, c. 23 | | Rights |
| 2019 | An Act respecting First Nations, Inuit and Métis children, youth and families, S.C. 2019, c. 24 | | Rights |
| 2019 | Budget Implementation Act, 2019, No. 1, S.C. 2019, c. 29 | | Governance |
| 2019 | | Bill C-391, Indigenous Human Remains and Cultural Property Repatriation Act, 1st sess., 42nd Parliament, 2019 | Rights |
| 2020 | | Bill C-230, National Strategy to Redress Environmental Racism Act, 1st sess., 43rd Parliament, 2020 | Regulation (environment), rights |
| 2020 | | Bill, C-5, An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code (National Day for Truth and Reconciliation), 2nd sess., 43rd Parliament, 2020 | Rights |
| 2020 | | Bill C-8, An Act to amend the Citizenship Act (Truth and Reconciliation Commission of Canada's call to action number 94), 2nd sess., 43rd Parliament, 2020 | Rights |
| 2020 | | Bill C-15, United Nations Declaration on the Rights of Indigenous Peoples Act, 2nd sess., 43rd Parliament, 2020 | Rights |

*Note:* Data from Parliament of Canada, LEGISinfo (n.d.).

Here, the international focus would be informed by the reality that countries have unique systems of law governing juries, obliging the researcher to examine a foreign system to engage in a comparative inquiry. My decision to employ the comparative method domestically underscores a core message of my work: In Canada, two sets of national laws governing First Nations are operational in the same historical and spatial fields. From this conceptual starting point, a comparative analysis draws out the (dis)continuities between the long-standing Indian Act regime and a second, updated legal structure built successively, statute by statute, over several years.

## Statutory Law as an Instrument of Standardization

Despite the long-sedimented legal structure created by the Indian Act, the legal contours of Indigenous–state relations are being revised (Coates 2008, 79–93). The legal "modernization" of settler colonialism in Canada is mostly associated with the judiciary, as the final quarter of the twentieth century was marked by a conspicuous increase in Indigenous rights litigation. An ill-defined incorporation of "existing aboriginal and treaty rights" under Section 35 of the newly patriated Canadian *Constitution Act* (1982, s. 35, Schedule B to the Canada Act 1982 (UK), 1982, c. 11) set Indigenous–state conflicts over harvesting, resources, self-governance, and treaty rights before Canada's highest bench for adjudication. Whether the resulting decisions represent a broad expansion of Indigenous political power or the congealing of Crown sovereignty is a matter of debate (Coates 2000; Walters 2006; Borrows 2010, 195–201). Regardless of one's interpretation of specific judgments, collectively they represent an important body of Aboriginal common law.

Not surprisingly, prevailing narratives script the courtroom as the preeminent site of reframing and revision of Indigenous–state relations. This depiction, however, risks minimizing the work of legislators, who not only respond to but also influence the scope of Section 35 rights. Whereas the body of law created through legal judgments known as the common law is the focus of most legal research, statutory law does not merely wait for entry into the jurisprudential realm, but is itself a rich analytic field. History might demonstrate a wide gulf between the law as text and the execution of law in space (Tucker 1991; Palmer 2003), but we should not be quick to dismiss the textual repositories of law. A rewriting of state law signposts political intentions on the ground. Although commonly overlooked in legal studies, statutory law represents an important source of legal power and spatial change. Serving as the blueprint for present and future transitions, statutory laws confer visibility on the constitution of specific places. In this article, I seek to emphasize statutory law as a key conduit through which ideology, norms, and relations are built, spatialized, and spread.

To contextually situate processes of federal statutory upheaval, I find it useful to consider Coulthard's (2014) observation that enunciations of polity and place by Indigenous peoples have compelled a contemporary shift in the reproduction and organization of colonial power. Coulthard (2014, 15) argued that deep-rooted policies of assimilation and exclusion are being sidelined by a conciliatory approach of state-circumscribed rights recognition (see also Povinelli 2006, 27–228; Million 2013). Coulthard's observation reminds us that, although the legal processes of colonialism have been continuous, they are not immune to change—a dynamism that is often lost in the metanarrative of death and destruction. For instance, control over the lawmaking that governs Indigenous peoples has been passed between military, imperial, and Canadian authorities, all reflecting distinct and evolving ideologies and aspirations, and producing overlapping conditions of protection, assimilation, segregation, and devolution varying across time and space (Moore et al. 1978). If law has long been used to shore up colonialism's internal vulnerabilities and to respond to evolving domestic and transnational beliefs, how is it being reconfigured to suit what Million (2013) described as the coinciding emergence of an "age of Indigenous human rights" (1) and a "densely networked transnational capitalism" (3)?

To understand how these statutes intervene to produce a framework that is workable on both planes (Indigenous rights recognition and capitalist economics), I borrow from research on the governing technique of standardization. A standard presents as a determinate measure or default with which alternate perspectives and practices grapple for visibility, viability, and endurance. Processes of standardization are more complex, however, and the history of state-making is deeply entwined with the history of standardization (see Scott 1998; Higgins and Larner 2010). Bhandar's (2015, 265) work on land titling

efforts and the standardizing technique of title by registration enacted in South Australia in 1858 demonstrates the power of standardization to geographically structure and secure colonial settlement, collapsing the "multiplicity [of Indigenous peoples and spaces] into a singular figure of the owner." Bhandar (2018, 81) also cautioned, however, that not all land titling efforts are the same, with globally dispersed titling systems inevitably conditioned by distinct geopolitical, national, and local inflections.

Canada's history of First Nations–related lawmaking is complicated by religion, politics, time, space, and, not least, by many disparate Indigenous legal orders, producing significant variegation, not only between Canadian and Indigenous jurisdictions, but also among Indigenous legal geographies themselves. In this article, I foreground statutory law as a contemporary instrument of standardization and state making, explicitly oriented to adapt to local dispositions and demands and resulting in hybridized regulative standards across disparately organized geographies. The standardizing technique's willingness to adapt and hybridize is what I wish to connect to Canada's evolving legal framework and colonial form. Embodying the key standardizing principles of adaptation and hybridization, contemporary lawmaking is conditioned by a flexibility that was never allowed in the Indian Act. In this article, I try to account for what it means for new law to replace the Indian Act, a regime that is, in some ways, appallingly interventionist and, in others, full of holes. I try to identify the aggregate emphases of new legislation, which holes it fills, which it leaves be, and what this says about law, colonialism, and the creation of hybridized spaces in an era of intensive capital expansion. I begin, though, with a discussion of the Indian Act and its fraught and paradoxical relationship with Canada's normative, liberal legal order.

## The Changing Place of the Indian Act in Discourse, Law, and Space

Whether formally identified as law or not, Indigenous legal orders and ways of being have always thwarted the full assertion of the liberal legal agenda.[5] As McKay (2000) noted, Canada's liberal order framework was built around "'exceptions' that defined the 'rule'" (627). Liberalism's forms of freedom and civilization are universally linked to populations made into exceptions through slavery, indentured labor, violence, and dispossession (Losurdo 2011; Lowe 2015). It does not follow, however, that such peoples simply accede to liberalism's unfreedoms. Reserve lands and residual territories function as spatial markers of juridical difference, wherein Indigenous peoples articulate their intragroup cohesion as well as their extragroup difference through the organization and control of space (cf. Rifkin 2009). If, in Canada, the Indian Act represented the legal structure meant to contain Indigenous challenges to the metaphorical and corporeal primacy of Canada's liberal legal order, on this front it achieved only partial success.

Christian paternalism ensured that Indian Act law treated Indigenous peoples as infantile and requiring protection from European-Canadian society through geographic, economic, political, and social segregation. Legislating such diverse matters as the impermissibility of dancing, allowable attire, alcohol consumption, mobility off reserve, residential schooling, and fundraising for claims-based litigation, an overlarge corpus of interventionist law was encompassed by the Indian Act (Backhouse 1999; T. King 2012; Miller 2017). Yet, the Act never fully supplanted preliberal law structuring Indigenous spaces.[6] Moreover, it failed to keep pace with liberalism's evolving demands. Core liberal precepts, including the creation of "a homogenous population endowed with uniform, *individual* equal rights" and the tying of personhood to private property, never found their way into the Indian Act and repeatedly met their demise at the reserve boundary (Brownlie 2009, 298). As such, the Act developed to become irreconcilable with the state's legal order and commitment to liberal capitalism more generally.

Replete with anomalies or breaches in the legal (property, taxation, etc.) regimes that systematize financial flows and citizenship standards, the Indian Act has spawned a regulatory deficit that has become more pronounced as normative Canadian systems of law and regulation have matured and developed. For example, the Indian Act systems of oversight for home building and renovation, hunting, fishing, and business and agriculture licensure are often nonexistent, limited, or optional in nature, with much provincially and municipally regulated activity escaping comparable scrutiny on reserve.[7] Although these legislative gaps are perceived by the federal government as deficiencies (Schmidt 2018), they also house partial autonomies that can be

flexed by Indigenous peoples for collective power and advantage (cf. Deloria 1970; Bruyneel 2007; Scott 2009; Byrd 2011). An unexpected paradox in the Indian Act regime comes into focus as aspects of daily life escape codification, commercialization, licensing, and Canadian law. Very simply, the foundational legal architecture of the settler-colonial order hampers government aims for an updated Canadian-First Nations legal regime.

Yet, for nearly 100 years, government could not conceive of a way to disconnect First Nations–related lawmaking from the Indian Act. Indeed, state preoccupation with the Act did not abate so much as shift over time. Increasingly viewing the Act as an albatross around the neck of modernization, government became fixated on its complete repeal. Pursuits of repeal would overlap with a decisive shift in Canadian economic policy in the 1980s, a decade defined by the retrenchment of the welfare state, the ratification of two international trade agreements, and the legal dissolution of public assets in the country's transportation, oil and gas, telecommunications, and manufacturing industries (Levac and Wooldridge 1997, 30). Yet the privatization and reregulation that reorganized Canada's national economic formation did not apply to First Nations jurisdictions. Never fully integrated into the normative legal order, Indigenous spaces escaped much of the legislative and ideological reach of Canada's industry-oriented shift, intensifying the Indian Act's "legal functional gap" (Charest 2016, 10). During the same period, legislative activity concerning First Nations, although not static, moved much more slowly.[8] Beginning with the White Paper of 1969, the legislative record of the late twentieth century is a recurrent sequence of statutory failures seeking to abolish the Indian Act and assimilate Indigenous peoples and lands (Canada and Chrétien 1969). Each legislative attempt was a casualty to widespread Indigenous opposition, followed by an extended period of legislative disorder. Canada's economic restructuring thus coincided with legislative foundering in the Department of Indian Affairs (Maaka and Fleras 2005, 191).[9] If this would evolve into a search for reconciliation and a closing of the "regulatory gap," the way forward was not yet clear (Charest 2016, 10). The legal divide across the reserve boundary remained poignant and powerful but with the turn of the twenty-first century this would begin to change.

Today, the Indian Act is seen as incommensurate with an economic rationality that positions market logics and moralities as arbiters of daily life (cf. Mullings 2012; Brown 2015). Whereas previous strategies to modernize Indigenous spaces were attached to the Indian Act's demise, efforts have been refocused away from this paradigm. Contemporary lawmaking neither reinforces the Act, nor pursues its total repeal. Although the Indian Act might yet be impervious to the latter (Morden 2016), it is not protected from circumvention and no longer figures as the principal site of lawmaking. More important today is the space the Act occupies in the political imagination. Popular antipathy for the Indian Act has marshaled much of the momentum for Canada's present statutory upheaval, simultaneously shielding new statutes from broad scrutiny.

As a narrative touchstone, the idea of a Canadian–First Nations relationship unyoked from the Indian Act galvanizes disparate segments of society. Deriding the Indian Act as a failed "containment system" that disables Indigenous forms of governance and authentic nation-to-nation engagement, Assembly of Manitoba Chiefs Grand Chief Derek Nepinak led a 2016 Joint Chiefs Assembly in adopting a resolution calling for the Act's dissolution (APTN National News 2016). Similarly, the Assembly of First Nations (AFN) asserted that "First Nations [need] to exert jurisdiction, create our own laws and move beyond the Indian Act entirely" (AFN News 2016). For the Canadian Taxpayers Association, a phaseout of the Indian Act is intuitively linked to the elimination of poverty among Indigenous people (Canadian Press 2013). Similarly, the book *Beyond the Indian Act* (Flanagan, Alcantara, and Le Dressay 2010) hangs the future on a turning away from the Act and toward the privatization of reserve lands.

To move beyond something carries connotations of emergence and significance, symbolized in this instance by the discarding of an archaic colonial instrument for a new liberatory path. The desire for a new relationship and the impulsion to move beyond the Indian Act have become relationally bound, wherein the execution of the latter is cast as requisite for the realization of the former. This is an easy equation on the surface, but one that masks the state's enduring intent to eradicate the collectivities that have survived Indian Act rule and eschews the discordant viewpoints held by proponents of the Act's demise. Ideological convergence on the desire to be rid of the Indian Act has narrowed the terms

of debate, so that the ambiguity and disagreement over what, in fact, lies beyond it, are badly obscured. Where Grand Chief Nepinak envisions the fulfillment of treaty texts, Flanagan, Alcantara, and Le Dressay (2010) see the privatization of reserve land. Contradictory visions of the future coexist even as an abundance of laws rewrite the present. The present, notably, responds to the demands of a global capitalist system.

## A New Settler Colonial Legality

For more than a century, Canada's liberal order sought to neutralize Indigenous polities through a paradigm of formal equality and regulate Indigenous spaces as privately held tenures within a territorially uniform nation-state. So, what has changed today? First, contemporary legal pursuits do not seek a centrally governed, perfect homogeneity. If government historically rejected the notion of separate laws for different groups, the contemporary state is comfortable with multiple, overlapping legal regimes, including those administered by First Nations themselves. In line with the adaptability and hybridization that are characteristic of standardizing processes, Indigenous spaces need not necessarily be governed by the same institutional frameworks as non-Indigenous spaces, so long as they are internally compatible or, to use the language of the state, "synergistic" (Charest 2016, 21). Second, contemporary laws do not appear as or feel like programs of totalizing reconfiguration. By treating the Indian Act as an assemblage of detachable and replaceable parts, rather than an aggregate whole, government promotes incremental changes that eclipse their cumulative effects. Coming into focus is the state's developing capacity for adaptation and responsiveness to local political ideologies and practices (cf. Ong 2006, 2007). For instance, an updated conception of human rights trades the liberal imperative of formal equality for an elastic and accommodating, if circumscribed, approach to rights recognition, depoliticizing and valorizing Indigenous peoples at the same time (Million 2013, 12; see also Altamirano-Jiménez 2004). I will unpack these ideological and strategic shifts as they appear in law and space.

### Rights Recognition

As a historically specific project, the contemporary upsurge in lawmaking has emerged in tandem with the advent of rights recognition and reconciliation as popularized destinations for Indigenous–state relations (Coulthard 2014). Scholars have noted that rights recognition and neoliberal capitalism share an interactive chemistry (Altamirano-Jiménez 2004, 2013; Kuokkanen 2011; Lindroth 2014; Ciupa 2017). Capital projects are promoted as rights-enhancing on the one hand, whereas "carefully delimited" rights recognition cultivates support for capitalist aims among rightsholders on the other (Hale 2005, 13). Purposefully fluid, rights recognition discourses mediate the disjuncture between free (entrepreneurial) market actors and free (sovereign) identities, aspirations, and assertions of Indigenous polities, promoting a "shared language" that is informed by "different visions" (MacDonald 2011, 263). As a companion process, the lawmaking of the last several years clarifies and structures the terms of recognition through a "selective endorsement" of Indigenous rights (Lightfoot 2012, 100). For instance, recently proposed legislation includes an attempt to make National Indigenous Peoples Day a statutory holiday (Bill C-369, An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code [National Day for Truth and Reconciliation], 1st sess., 42nd Parliament, 2018). Far from a benign rights recognition event, however, National Indigenous Peoples Day is situated within "Celebrate Canada," a multiday celebration that also marks Canadian Multiculturalism Day on June 27 and Canada Day on July 1. Institutionalizing National Indigenous Peoples Day in the Canadian holiday calendar would elevate its stature. It also equates Indigeneity with temporary and marketable cultural performance, however, locating it within the register of Canadian multiculturalism, rather than as geopolitical survival. Creating a template for Indigeneity with which settler society can envision itself reconciled, rights law presents as enlightened while preserving existing economies of space and power.

Rights-based lawmaking has accelerated under the government of Justin Trudeau (2015–present). For example, the enhanced jurisdictive authority of Indigenous communities to self-administer their child welfare systems under An Act respecting First Nations, Inuit and Métis children, youth and families (S.C. 2019, c. 24), represents an important legal departure from the past. Although ambiguity in the accompanying funding arrangements has left this

effort open to criticism (Metallic, Friedland, and Morales 2019, 8), the language of this statute and others is markedly different from that of earlier historical periods. Statutes passed from 2018 onward, in particular, include statements of support or nonderogation regarding the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the "existing aboriginal and treaty rights" affirmed by Section 35(1) of the Constitution Act, 1982. For instance, the preamble of An Act respecting First Nations, Inuit and Métis children, youth and families includes a government commitment "to achieving reconciliation … through renewed nation-to-nation, government-to-government … relationships" (S.C. 2019, c. 24). Even bills that are not specifically related to Indigenous peoples or issues employ similar language to situate themselves within reconciliatory and nation-to-nation frameworks (see Bill S-217, Commissioner for Children and Young Persons in Canada Act, 1st sess., 43rd, Parliament, 2020).[10]

In fact, contemporary lawmaking is so laden with narratives of recognition, reconciliation, and renewal that it becomes difficult to parse material conditions from discursive performances. To explore this argument, let us consider the evolving definition of Indigenous fisheries, first legislated in 2012 and later amended in 2019. The 2012 definition reads, "'Aboriginal', in relation to a fishery, means that fish is harvested by an Aboriginal organization or any of its members for the purpose of using the fish as food, for social or ceremonial purposes or for purposes set out in a land claims agreement entered into with the Aboriginal organization" (Jobs and Growth Act, S.C. 2012, c. 31 s. 2(1)).

Legislating a strict duality between culture and economics, the 2012 definition was criticized for its exclusion of unlicensed Indigenous fisheries, those operating under historical treaties or according to historical practices never described in treaty, and for the apparent interdiction of Indigenous commercial fisheries (Assembly of First Nations [AFN] 2012, 4). In comparison, the 2019 amendment establishes that "*Indigenous*, in relation to a fishery, means that fish is harvested by an Indigenous organization or any of its members pursuant to the recognition and affirmation of Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*" (*An Act to amend the Fisheries Act and other Acts in consequence*, Statute of Canada 2019, c.14, amendment to s. 9.2(1)).[11]

The language of the 2019 amendment replicates the contemporary standard for rights recognition in law. A review of Section 35 fishing jurisprudence, however, reveals greater likeness between the 2012 and 2019 definitions than might be presumed. *R. v. Sparrow* establishes an Indigenous right to fish for food and ceremony ([1990] 1 Supreme Court Report 1075), and *R. v. Marshall* extends the right to fish for a "moderate livelihood" ([1999] 3 Supreme Court Report 456). Thus, the scope of Indigenous fishing rights recognized through Section 35 common law (to which the 2019 definition defers) forecloses the use of resources for capital enterprise. Indigenous economic traditions are translated into culturally defined rights, even as those Indigenous fisheries operating under a sovereign political ethos are targeted for violence by segments of the White settler populace (Bedford 2010; Quon 2020; cf. Goldstein 2008). Hence, despite embodying the standard for rights recognition language in its reference to Section 35 rights, the 2019 amendment does little to materially alter or expand the rights of Indigenous fishers. In this example, the interplay between the state's standards for rights recognition and for economic regulation become visible, with Indigenous rights ancillary to political restrictions on Indigenous commercial activity.

To summarize, the contemporary embrace of rights recognition in law marks a significant shift from the lawmaking of the early twentieth century, which curtailed and criminalized much Indigenous cultural and spiritual practice. With rights law, Canada self-constitutes a new legitimacy, not as a colonizing force, but as a forward-thinking society engaged in an overdue reckoning with a dishonorable past. Rights recognition statutes do not substantively transform the imbalance of power in colonial relations, though. State contours for recognition are "incomplete," disallowing, in the case of fishing, the possibility for self-directed, commercial Indigenous economies (Altamirano-Jiménez 2004, 355). Moreover, they represent only a small percentage of the legislation passed in Canada between 2005 and 2020. The legislative emphasis of this period rests not on rights but rather on deep structural changes to the economic, property, taxation, and regulatory systems modulating Indigenous governance and space. If standardizing laws reflect particular logics, they rely on regulatory systems and practices for material, geo-legal impact. Carrying the force of law,

the regulatory frameworks that stipulate how statutes are operationalized are also being reworked. Looking beyond the calculus of rights in the next section, I attempt to show how new law is simultaneously ceding greater regulatory power to First Nations and expanding the state's governing reach into First Nations communities.

## Regulatory Restructuring

As I have noted, for roughly the first 100 years of its existence, the Indian Act enjoyed a monopoly on the federal lawmaking that administered Indigenous lives and spaces. In contrast, most contemporary statutes present not as amendments to the Indian Act but as stand-alone sectoral legislation, sometimes originating from departments not typically associated with Indigenous affairs. Sectoral statutes encompass both mandatory and optional forms of law. The distinction between these legal categories lies partly in how they are operationalized and partly in what they are designed to do. *Mandatory* legislation applies to all First Nations, regardless of their explicit consent, whereas the adoption of *optional* (or "opt-in") legislation requires initiation by a First Nation through a formal request to the government or a federally designated agency. Optional statutes induce First Nations to self-standardize their land, taxation, and regulatory regimes, ostensibly as a pathway to prosperity (de Soto 2000). They are designed to align areas of regulatory mismatch (lands, taxation, capital projects, and governance) between reserves and provinces. Mandatory statutes apply to all First Nations unless they are exempt through a treaty, a self-government agreement, or optional sectoral legislation that renders the mandatory statute redundant. Akin to "mopping-up exercises," mandatory statutes often refine existing legal structures and systems of power (Lloyd and Wolfe 2016, 11).

For instance, the Jobs and Growth Act includes a little noticed adjustment in the long continuum of the state's land dispossession techniques, producing new forms of precarity in Indigenous land relationships by weakening thresholds for the surrender of Indigenous land. All proposed surrenders require community approval determined by referendum. In the past, surrenders required the sanction of a majority of the community's eligible voters. The Jobs and Growth Act rewrites the terms of such referenda, elevating ministerial powers of intervention. Should referendum results show that a majority of voters support surrender, but a greater majority did not vote at all, the Minister can immediately schedule a second referendum and radically alter the threshold for victory. Through a second referendum, surrender can be authorized by a majority of actual, rather than eligible, voters. Low voter turnout, however, does not necessarily signal community complacency. Rather, a significant proportion of the nonvoting electorate are often conscientious objectors, expressing disavowal of the Indian Act through nonparticipation in elections and referenda held under its provisions. Whereas, previously, nonparticipation could impede potential surrenders, the Jobs and Growth Act has dismantled this strategy of opposition.

Such mandatory statutes form an important part of the Canadian legislative suite, but government emphasis rests decidedly on the optional statutes. An à la carte legislative modality, optional statutes encourage First Nations to move incrementally beyond Indian Act rule. The state's method is no longer to repeal, or even substantially amend, the Indian Act but, instead, to move communities, one by one and section by section, into alternate legal structures until no one is left for the Act to govern. This is a hollowing out from the inside. Designed to be administered by First Nations or Indigenous-led statutory institutions, which are legislated into existence and funded by the Canadian government, opt-in legislation fills the regulatory deficits of the Indian Act regime with law that is interchangeable with normative Canadian standards in such areas as lands, taxation, and capital enterprise. Contemporary federal and provincial legal norms are thus extended into Indigenous jurisdictions, even as government devolves responsibility for their administration to First Nations. Ensuring a "compatible investment environment," communities that opt in are presented by government as progressive, rights-bearing First Nations (Charest 2016, 11).

A critical survey of opt-in statutes shows they selectively fill gaps in the Indian Act regime, revealing what is significant to colonial power and what is not. Whereas statutes addressing on-reserve healthcare disparities or industrial waste deposits on First Nations lands are notably absent, statutes responding to state-perceived deficits in resource and revenue regulation are numerous. For instance, the First Nations Certainty of Land Title Act restructures the classification of reserve land (S.C. 2010, c. 6).

Pursuant to the Indian Act (ss. 21, 55), interests and rights in reserve lands are alternately registered in the Reserve Lands Register (RLR) or the Surrendered and Designated Lands Register (SDLR), rather than the provincial land title system (Gauthier and Simeone 2010, 1). The First Nations Certainty of Land Title Act serves as an alternative to the RLR and SDLR, enhancing protection for private interests in reserve land and extending Canadian regulatory norms across reserve boundaries. Specifically, the Act denotes "interest or rights in the reserve lands to constitute fee simple title" (S.C. 2010, c. 6, s. 4.1(2)(c)).

This Act reflects a strategic modernization of Indian Act land systems, folding Indigenous space into familiar, legible grids. By comparison, roughly 80 percent of individual land holdings on reserves are currently retained as customary or traditional allotments (Charest 2016, 11). Missing from formal government records, customary allotments are not enforceable in court and, from the state's perspective, imbue Indigenous lands with uncertainty. In this way, the First Nations Certainty of Land Title Act represents a "legal capture" of Indigenous space (Blackburn 2005, 59). Producing navigable pathways of access for capital interests and government taxation regimes, the Act serves as a contemporary enhancement of Canada's early colonial cartographic work (see Blomley 2003). Arbitrating between the economic needs of Indigenous communities and the interests of corporate powers, the First Nations Certainty of Land Title Act connects "the colonial relation to the capital relation," making the prospect of opting in contingent on an active corporate partner and a prospective capital project (Stanley 2016, 2433). First Nations political aspirations and material needs might occupy different domains, but they are held in tension, requiring difficult decisions where they intersect. As Escobar (2008, 175) noted, economically disenfranchised populations' desire for capitalist development is often disregarded by anticapitalist critiques. Newly imbued with a quantifiable and legally defendable interest in land, massive corporate enterprises have been approved under the First Nations Certainty of Land Title Act such as a wood fiber optimization plant at the Fort William First Nation and an oil sands operation at the Fort McKay First Nation (Poirier 2010).

Interrogations that focus solely on discrete statutes, though, risk overlooking the confluent nature of this new modality. Stand-alone statutes like the First Nations Certainty of Land Title Act do not, in fact, stand alone, but are embedded in a broad suite of legislation approaching the Indian Act in reach and ideological ambition. For example, the precursor to the First Nations Certainty of Land Title Act the First Nations Commercial and Industrial Development Act, empowers the state to create federal regulatory regimes for commercial and industrial projects on reserve, replicating or aligning with existing provincial standards where "provincial regulatory laws do not apply … to the same extent as elsewhere in a province" (S.C. 2005, c. 53). The First Nations Oil and Gas and Moneys Management Act transfers management powers for oil and gas resources and revenues to First Nations in quasi-ownership formation (S.C. 2005, c. 48). Legal title for the land and resources remains with the Crown, but signatory First Nations assume the risk of "any loss or damage resulting" from any oil or gas project, including, potentially, environmental damages (S.C. 2005, c. 48, s. 27; see also ss. 3[1], 10[b]). The First Nations Elections Act encourages bands to align their electoral terms and election schedules with those of adjacent jurisdictions (S.C. 2014, c. 5). The First Nations Fiscal and Statistical Management Act creates institutions and regulatory boards to facilitate the establishment of long-term loans and taxation regimes on reserve (S.C. 2005, c. 9).[12] The First Nations Tax Commission, one of the statutory institutions originating from the First Nations Fiscal and Statistical Management Act, assumes the supervision of First Nations taxation regimes, thus integrating a layer of Indigenous-led administrative oversight into the architecture of the state. Serving as an intermediary between First Nations and the government, the First Nations Tax Commission has emerged as a leading proponent for the privatization of reserve land.

Attempts in law to privatize Indigenous lands can be traced to pre-Confederation times (see, e.g., An Act to regulate the management and disposal of the Indian Reserves in this Province, S.N.B. 1844, c. 47). With First Nations consistently opposed to private titling proposals, though, legislative workarounds to privatization now prevail.[13] Although not abandoning privatization as the end goal (Dempsey, Gould, and Sundberg 2011; Pasternak 2015; Schmidt 2018; Fabris 2019), acts like those just considered restructure and open Indigenous lands in ways previously perceived as

unthinkable in the absence of private ownership. Where bands refuse incorporation into private property regimes, emphasis has shifted to standardizing the legal frameworks by which reserve lands are governed. New law mitigates the absence of private land tenure by sealing the gaps in law that distinguish reserves as distinct legal entities.

In summary, whereas Canada's settler-colonial legality was built through amendments to a single act, contemporary lawmaking employs a different organizational methodology. The state-favored legal modality is shifting from a singular, sweeping legal structure to one defined by disaggregation, flexibility, and choice. Operationally, government and, more recently, Indigenous-led statutory institutions, cultivate engagement by responsive (and resource-rich) communities, constructing legislation so that any innovation in Indigenous–state relations ensures greater congruence with standard fields of law and regulation. When these statutes are considered simultaneously, we see that Harris's (2002) important observation that "rights in law for Natives and non-Natives [differ] sharply across reserve boundaries" (xviii) does not carry the same weight as even a few decades ago. Reserves might be more legally variant than ever before (individually calibrated by multiple distinct statutes) but the juridical dissonance between reserve and Canadian jurisdictions is shrinking. A new class of hybridized legal spaces is emerging. Altering the boundary separating reserve from nonreserve land, a cohesive legal framework elevates representations of symbolic difference while curbing discrete infrastructures of law and regulation that represent material variation.

## Conclusion

In 2017, delegates of the 38th annual general assembly of the Assembly of First Nations were asked, "If not the colonial-imposed institutions for administration of Indians living on reserves under the Indian Act, then what" (Wilson-Raybould 2017)? Although this question was posed rhetorically, the Canadian legislative record of the past fifteen years is flush with answers. Indeed, two distinct statutory bodies of federal law are now in play on the same temporal and spatial fields. Teasing out the material outcome of the new legal regime is complicated by variances in the uptake of multiple distinct statutes across the 619 (government recognized) First Nations and more than 3,000 corresponding reserves. The legislation of the past decade and a half, however, charts a path to standardizing key markers of Indigenous geo-legal difference, including distinctive land and taxation statuses, and shifts government attention to the adversities afflicting implementation. An overhaul of the settler-colonial legal order should no longer be perceived as linked to the Indian Act's demise and continuously deferred to the future (see Quesnel 2020), but treated instead as an existent process, already underway. Likewise, arguments conflating the end of Indian Act rule with rights recognition and reconciliation impair critical analysis of the contemporary laws restructuring and renewing settler colonial formations of power.

I have borrowed from standardization scholarship to explain the core mechanics of contemporary lawmaking, which use techniques of adaptation and hybridization to reformulate complex and diverse environments into "predictable domain[s]" that are knowable, taxable, and ready for investment (Wears 2015, 4). I suggest this analytical framework also gives meaning to what is lost when standardizing processes succeed. In industrial contexts, an essential feature of standardization is the simplification of manufacturing processes and product models (Ewald 1990, 150). Applied more broadly, though, standardization becomes an adversary of plurality and diversity in general. Simplifying and streamlining how life and space are understood, produced, and practiced, standardization "truncates the range of possibilities" for human existence (Henman and Dean 2010, 80). In a paradigm of standardization, interacting with, much less valuing, the rich diversity of Indigenous ontologies and epistemologies becomes so much unnecessary labor.

Nuu-chah-nulth law scholar Mack (2007) described a tension inherent in Indigenous lives, whereby "an alternate set of norms generated by our own communities … directs us to behave in ways that do not always align with state law" (37). An increasingly comprehensive pro-capital legal regime customized for First Nations restricts "alternate vision[s] of legal possibility" (Penalver and Katyal 2007, 1139). Critically, the act of opting into new statutory frameworks does not only mean opting out of Indian Act structures, but, more important, it risks moving Indigenous peoples of out the nation-specific "collaborative process[es]" of their own legal orders (Napoleon 2007, 4). Engaging with the statutory record of the past fifteen years destabilizes dominant

narratives that conflate rights law and the insertion of modern legal standards into Indigenous spaces as reciprocal markers of a virtuous postcolonial future, and instead initiates a discussion about what decolonial practice might mean in relation to the law.

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## Notes

1. Commonly referred to as the Indian Act, this statute was formally enacted as *An Act to Amend and Consolidate the Laws Respecting Indians* [*Indian Act of 1876*], S.C. 1876, c. 18 (39 Vict.).
2. The term *First Nations* is used herein to reference units of Indigenous identity, land, and governance modulated by government legislation, including individual, reserve, self-government, and modern treaty status. The term *Indigenous* exceeds state designations to refer to the original peoples of the lands on which this study rests. The terms *Indian* and *Aboriginal* are used in historical context.
3. The White Paper served as a template for Bill C-79, the Indian Act *Optional Modification Act* (2nd sess., 35th Parliament, 1996) and Bill C-7, the *First Nations Governance Act* (2nd sess., 37th Parliament, 2002). Indigenous opposition also rendered these statutory projects nonstarters.
4. Scholars note, however, that the comparatist's international focus might require revision, as "customary law, religious law, or unofficial lawmaking" by nonstate entities should be considered (Van Hoecke 2015; see also Eberle 2009, 486). Additionally, comparative legal studies using alternative frames of analysis are not without precedent. For instance, for Zedner (2003, 153), comparative analysis of the various meanings of *security*, such as "public good or private service," can be explored on a domestic scale.
5. Friedland (2012, 3) observed that Indigenous law is generally "invisible or … incomprehensible" to non-Indigenous people, whereas Borrows (2010) stressed the distinctiveness of Indigenous legal orders, not only from Canadian law, but also from each other.
6. For instance, the principle of sovereignty (in an international legal sense) in the Two Row Wampum informed agreements between the Haudenosaunee and the Dutch (1645), the French (1701), and the English (1763–64), which continues to influence Haudenosaunee–state relations today (Borrows 2010, 76).
7. Existing jurisprudence suggests that provincial law applies in the absence of comparable Indian Act legislation, but viewing themselves as beyond provincial jurisdiction, many First Nations have a history of noncompliance and "assumption of control" in relation to provincial law (Sanders 1984, 121).
8. Between 1984 and 1993, the government ratified two international trade agreements and legislated the privatization of twenty-five Crown corporations (Barlow and Campbell 1995, 77). During the same time frame, the most significant legislative amendment relating to the Indian Act was the partial redress of its in-built gender discrimination (Bill C-31, An Act to Amend the Indian Act, S.C. 1985, c. 27, was enacted as Indian Act, R.S.C. 1985, c. I-5). Additionally, the Sechelt Indian Band Self-Government Act (S.C. 1986, c. 27) was passed in 1986, according the Sechelt First Nation quasi-municipal status, but this agreement was not supported by other First Nations and was not generative of replication (Etkin 1988). Finally, First Nations taxation powers were enhanced in 1988 in legislation known as the Kamloops Amendments. However, it would be sixteen years before this legislation was revised and expanded.
9. The adoption of the Constitution Act, 1982 and attendant "class of [Aboriginal] constitutional rights" further complicated Canada's rapidly morphing settler colonial legal formation (Turner 2006, 4).
10. Such bills are not listed in Table 1.
11. Oddly, the French language version of the 2019 Act continues to reference "*consommation personnelle*" (personal consumption) and "*à des fins sociales ou cérémoniales*" (for social or ceremonial purposes) in the definition of Indigenous fisheries (see Loi modifiant la *Loi sur les pêches et d'autres lois en conséquence*, S.C. 2019, c. 68, s. 7.2(1); my translation).
12. The Act was renamed First Nations Fiscal Management Act in April 2013.
13. Indigenous involvement in the modern treaty process, contingent on the conversion of vast expanses of Indigenous land to fee simple tenure, is often offered as evidence of Indigenous support for land privatization, but accounts from inside treaty communities reveal apprehension of, and aversion to, land privatization (Mack 2007; Blomley 2015).

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